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 14 Holtzbrinck Networks GmbH, and
 15 Holtzbrinck Ventures GmbH

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN JOSE DIVISION

19 FACEBOOK, INC.,
 20 Plaintiff,

21 v.

22 STUDIVZ LTD., , HOLTZBRINCK
 23 NETWORKS GmbH,
 24 HOLTZBRINCK VENTURES
 25 GmbH, and DOES 1-25,
 26 Defendants.

Case No. 5:08-CV-03468 JF
 Assigned To: Hon. Jeremy Fogel

**DECLARATION OF DR. ANTON G.
 MAURER IN SUPPORT OF
 DEFENDANTS' MOTION FOR
 PROTECTIVE ORDER; EXHIBIT O**

[Reply Memorandum of Points and
 Authorities; Supplemental Declaration of
 Stephen S. Smith (with Exhibits D-N);
 and Evidentiary Objections Filed
 Concurrently]

Date: December 9, 2008
 Time: 10:00 a.m.
 Dept./Place: Courtroom 2, 5th Floor
 Hon. Howard R. Lloyd

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1 Scheja and asserted that the proceeding scheduled in the German Action at the
2 “*Landgericht Stuttgart*” on December 16, 2008 is not a “trial” as that term is used
3 in the United States but instead is the German procedural equivalent of what in the
4 U.S. “we would term a Case Management Conference.” (Facebook Opp. at 4:5-6;
5 p.8 of 20) (Docket No. 59).

6
7 3. Facebook’s Opposition brief further contends that the hearing in
8 Germany on December 16 is not “a ‘trial’ in the sense that we use the word here in
9 the United States -- a resolution on the merits. Instead, it is more akin to a Case
10 Management Conference, where Facebook will not be expected to produce any
11 documentary evidence.” (Facebook Opp. at 14:11-14; p.18 of 20) (Docket No. 59).

12
13 4. For the following reasons, Facebook’s contentions (as outlined in
14 Paragraphs 2 and 3 above) are factually wrong and without any legal basis.

15
16 a. Under point no. 1 of its July 23, 2008 Order, the *Landgericht*
17 *Stuttgart* scheduled a “*Früher erster Termin zur mündlichen Verhandlung*” (the
18 literal translation of which is “early first date for oral trial”).

19
20 b. Under point no. 2.2 of its July 23, 2008 Order, the *Landgericht*
21 *Stuttgart* ordered that Facebook, as defendant, must respond to the Complaint
22 within six weeks if it wishes to defend itself. By its further Orders dated September
23 9, 2008 and October 15, 2008, and upon Facebook’s motions, the *Landgericht*
24 *Stuttgart* first extended Facebook’s time to respond to October 24, 2008 and then to
25 November 19, 2008.

26
27 c. The German Code of Civil Procedure (“*Zivilprozessordnung*”)
28 provides, at § 277 subsection 1 sentence 1, that a defendant has to present, in its

1 response to the Complaint, all defenses. Under point no. 2.2 of its July 23, 2008
2 Order, the *Landgericht Stuttgart* referred to §§ 277 subsection 2, and 296
3 subsections 1 and 3 of the German Code of Civil Procedure, and instructed
4 Facebook to submit in its response to StudiVZ’s Complaint (i) all pleas and
5 defenses against the Complaint, (ii) all offers to produce evidence and to state what
6 that evidence is, and (iii) all opposition to evidence produced by StudiVZ Ltd., and
7 all within the stipulated time frame of the response (*i.e.*; by November 19, 2008). If
8 Facebook would have missed this deadline, Facebook would have been in default
9 and all further defense of the lawsuit by Facebook would have been cut off unless
10 Facebook could convince the court to excuse the delay. Thus, the Order required
11 Facebook to present all of its defenses, including any documentary evidence and all
12 offers to produce evidence, in its response to the Complaint that was due on
13 November 19, 2008.

14
15 d. And, in fact, on November 19, 2008, Facebook filed a lengthy
16 response in the German Action presenting all of Facebook’s defenses and evidence.
17 A true and correct copy of Facebook’s response in the German Action is attached
18 hereto as “Exhibit O” (the “Response”). Facebook’s Response is eighty-eight
19 pages long, consisting of a six page, single-spaced answer and attaching and
20 incorporating by reference an exhibit “B1” that is an eighty-two page document
21 containing a lengthy, single-spaced complaint that Facebook just filed on the same
22 day -- November 19, 2008 -- against StudiVZ at the “*Landgericht Köln*” (district
23 court Cologne), Germany, offers of purported proof on all significant issues, and a
24 stack of exhibits that Facebook alleges support its new German lawsuit. This is
25 obviously nothing like the report of the early meeting of counsel or “case
26 management conference” statement in the instant U.S. federal lawsuit. The reason
27 for that is simple -- Facebook must put forth all of its defenses and factual
28 arguments now, because a trial date of December 16, 2008 was set in the German

1 Action months ago and the court in Stuttgart has denied two requests by Facebook
2 to postpone it. If Facebook had not made all of its written arguments and submitted
3 its offers of proof and alleged supporting evidence in the Response, then Facebook
4 could not have submitted them later without court approval, and Facebook would
5 have increased its risk of an adverse judgment at the December 16, 2008 trial.
6 Facebook’s Response even contains a petition to dismiss the case based upon an
7 alleged lack of admissibility of the claims filed by StudiVZ. This is a legal
8 argument which will be decided by the “*Landgericht Stuttgart*” without taking any
9 further evidence. If the “*Landgericht Stuttgart*” would find Facebook’s argument
10 to be correct, it would dismiss the case after the oral trial on December 16, 2008.
11 Therefore, based on its petition, even Facebook expects to have only one oral trial
12 date.

13
14 e. § 275 subsection 2 and § 300 subsection 1 of the German Code
15 of Civil Procedure further discuss what can happen at the December 16, 2008
16 “early first date for oral trial” in the German Action. Those sections state that the
17 court shall render a judgment after such early first date of oral trial if the court finds
18 that the matter is then ripe for decision. In Germany, a judgment is often rendered
19 after the early first date of oral trial. Only if Facebook also requests the testimony
20 of witnesses or expert reports could there possibly be (in the court’s discretion) a
21 second oral trial date. Even if the Stuttgart court would conclude after the oral trial
22 on December 16, 2008 that the German Action cannot be decided after the early
23 first date of oral trial and that a second oral trial date is necessary, the Stuttgart
24 court would make all appropriate orders to bring the German Action to a rapid
25 conclusion and judgment.

26
27 f. Upon information and belief, it is also my understanding that a
28 Case Management Conference in the United States is an early pre-trial conference

1 under Rule 16 of the Federal Rules of Civil Procedure and that, absent a settlement,
2 there can be no final judgment rendered at the end of a Case Management
3 Conference. Therefore, it is completely inaccurate to say that the first early date of
4 oral trial under the German Code of Civil Procedure is the same as a Case
5 Management Conference.

6
7 g. The Declaration of Dr. Katharina Scheja filed in opposition to
8 the instant motion appears to me to be cautiously drafted and so does not say that a
9 judgment will not be rendered after the December 16, 2008 early first date of oral
10 trial in the German Action. Indeed, such a statement would have been wrong based
11 upon the petition filed by Facebook. Instead, I note that Dr. Scheja states in the
12 second sentence of Paragraph 4 of her Declaration that, if no settlement is made, the
13 judge will “usually” schedule future hearings and deadlines. However, this
14 statement does not exclude that a judgment will be rendered after such early first
15 date of oral trial. In contrast to the courts in Frankfurt (the city in which Dr.
16 Scheja’s office is located), the courts in the district of the “*Oberlandesgericht*
17 *Stuttgart*” have a “rocket docket.” In my experience, the *Landgericht Stuttgart* will
18 schedule a second date for oral trial only in cases that require the court to hear
19 witnesses or experts for rendering a final judgment. Otherwise, the *Landgericht*
20 *Stuttgart* will render a judgment after the early first date of oral trial.

21
22 I declare under penalty of perjury under the laws of the State of California
23 and the United States that the foregoing is true and correct to the best of my
24 knowledge, and that this declaration was executed in Stuttgart, Germany on
25 December 2, 2008.

26
27 _____ /s Anton G. Maurer

28 Dr. Anton G. Maurer